



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/18UB/LBC/2019/0051

**Property** : Flat 3, The Hartleys, 6-8 Hartley Road,  
Exmouth EX8 2SG

**Applicant** : Danesdale Land Limited

**Representative** : Remus Management Limited

**Respondent** : Mr P A Meyer

**Representative** :

**Type of Application** : Breach of lease

**Tribunal Member(s)** : Judge R. Cohen

**Date and venue of hearing:** Paper determination

**Date of Decision** : 19 May 2020

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DECISION

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## ***Determination***

- 1 The Tribunal is satisfied that the Respondent committed the breaches of the covenant at paragraph 8 of the First Schedule to the lease. The Tribunal is not satisfied that the Respondent committed any breach of the covenant at clause 3.3 of the lease. To that extent, the Applicant's application to the Tribunal is allowed.

## ***The Application***

- 2 The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that a breach of covenants contained in the Respondent's lease has occurred.
- 3 The application to the Tribunal was made on 19 November 2019. On 29 November 2019 the Tribunal made directions. On 23 December 2019 the Applicant filed a statement of fact verified by a statement of truth with supporting documents. There has no response or witness statement whatsoever from the Respondent.

## ***The Evidence***

- 4 By a lease ("the Lease") dated 24 March 2000, flat 3, The Hartleys, 6-8 Hartley Road, Exmouth EX8 2SG ("the Flat") was let for a term of 125 years from 24 June 1993. The Respondent is the lessee and the Applicant is the lessor under the Lease. The lessor's title consists of 17 flats, parking areas, gardens and grounds. Apart from one area edged blue on the lease plan (of which the Tribunal has only a monochrome copy), these premises are defined in the Lease as the Mansion and the building within the Mansion of which flat 3 is part is defined as "the Building".
- 5 The lease demised "**ALL THAT** the flat (hereinafter called "the Flat") numbered 3 and being on the ground floor of the Building (including the floor and ceilings of the Flat (but not the structures supporting the same) and the internal and external walls between such levels) but excluding the roof and foundations of the Building ...**TOGETHER WITH** the easements rights and privileges referred to in the Second Schedule hereto". The Second Schedule stipulates the rights of the Respondent to use parts of the Mansion and its driveways and so on for the purposes set out in that schedule.
- 6 By clause 2 of the Lease, the lessee covenanted with the lessor and with the other lessees of the other flats comprised in the Mansion that "the lessee and the persons deriving title under the lessee will at all times hereafter observe the restrictions in the First Schedule" to the Lease.
- 7 Clause 3 of the Lease provides as follows

The Lessee **HEREBY COVENANTS** with the Lessor as follows

3.3 not to make any structural alterations or structural additions to the Flat nor to erect any new buildings thereon or remove any of the Landlord's fixtures and fittings without the previous consent in writing of the lessor.

8 Paragraph 8 of the First Schedule to the Lease provides as follows

not to obstruct the driveway, parkways, entrances, entrance halls, landings and staircases leading to the flats in the Mansion or to leave any article whatsoever therein or thereon.

9 The Applicant alleges that the Respondent has committed breaches of the covenants in the Lease in that the Respondent has erected 2 sheds on the driveway outside of his property without the Applicant's consent. The Applicant's complaint is that there was a shed damaged by a fire in May 2018 and that after the fire another shed was put up. There is no evidence that the Respondent sought permission or was granted it in relation to the making or erection of either shed. The Applicant says that it wrote to every other leaseholder concerning the erection of the sheds and several complaints were received. No communications between the Applicant and its other lessees has been produced to the Tribunal. No evidence has been provided to the Tribunal concerning the specification of either shed, save that the more recent shed is metal. There is no evidence as to how either shed is affixed to the ground or whether they rest on their own weight.

10 Mr Daniel Morgan of Remus Management Limited, the managing agents for the Applicant and the Applicant's representatives in this Tribunal made the statement of fact. In it, Mr Morgan states that the Flat is a ground floor flat with its own private entrance, accessed via a shared driveway leading to a shared car park. Mr Morgan then summarised the correspondence referred to below.

11 On 12 March 2019 Mr Morgan wrote to the respondent stating that Remus had recently received a complaint from a leaseholder at The Hartleys regarding the erection of a metal shed outside the Flat. Mr Morgan wrote

" As this is on managed land you are required to obtain the freeholder's permission for the shed to be erected on managed land."

Mr Morgan indicated that he would write to all the other leaseholders to see if there were any objections.

12 On 5 April 2019 Mr Morgan wrote to the Respondent saying that from the response he received from the adjoining owners, was that they were not happy for the shed to stay on the managed land and it should be removed. Mr Morgan also asked the Respondent to arrange for the shed damaged by a fire to be removed from the managed ground.

- 13 On 31 May 2019 Mr Morgan wrote again to the Respondent. He referred to clause 3.3 of the lease, re-iterated that the adjoining owners were not happy for the metal shed to stay on the managed land and asked for the shed to be removed within one month. Mr Morgan also asked for the shed damaged by a fire to be removed from the managed ground.
- 14 On 5 November 2019 Mr Morgan wrote again to the Respondent. He referred to both clause 3.3 of and paragraph 8 of the First Schedule to the Lease. Mr Morgan asked for both sheds to be removed by 15 November 2019.
- 15 There is no evidence of any reply from the Respondent to any of the above letters.
- 16 The Applicant has produced black and white copies of 7 photographs. All the photographs show a shed to the left of a light coloured front door and wooden structure which may form part of flat 4. It is unclear from the photographs which front door is shown. Four of the photographs show a wooden coal shed or similar between the 2 structures mentioned. Three of the photographs do not show the coal shed. The photographs are not dated and it is not possible to say whether the coal shed was present at the date that the application to the Tribunal was made or when it was present or when it was removed.

### **Consideration**

- 17 The Tribunal directs itself that the purpose of bringing proceedings under section 168(4) of the Act is to enable a landlord under a long lease of a dwelling to serve a notice under section 146 of the Law of Property Act 1925 which is a necessary preliminary to forfeiture of a lease for a breach of covenant by the tenant other than non-payment of rent. In these proceedings the Tribunal is required to determine whether the tenant has committed an actionable breach of covenant. A finding against the tenant could result in the loss of a valuable asset which may be the tenant's home.
- 18 The Tribunal has considered the terms of the covenant in clause 3.3. The covenant prohibits changes to or activities on or in the Flat. The Flat means the habitable unit which is Flat 3. The lessee has rights granted by the Second Schedule, over land outside the Flat. But the land over which the Second Schedule grants rights in favour of the Respondent is not part of the Flat. On the true meaning and effect of this covenant it does not apply to changes made to or activities on that land. Accordingly, the Tribunal holds that the covenant in clause 3.3 is not engaged by the erection of either shed complained of and the Respondent has not committed any breach of that covenant.

- 19 Paragraph 8 of the First Schedule to the Lease concerns the driveway, parkways, entrances, entrance halls, landings and staircases leading to the flats in the Mansion.
- 20 The Tribunal has been able to compare the lease plan with the photographs. That comparison, taking into account the unchallenged evidence of Mr Morgan has led the tribunal to find that on the balance of probabilities, the Respondent committed breaches of paragraph 8 of the First Schedule in that the erection of both sheds have caused obstructions which engage that paragraph. It may be that wooden shed (the coal shed) has been removed and may have been removed at the time the application was made. However, the Tribunal directs itself that an application ought to be allowed and a determination made that a breach has been committed even if the breach has since been remedied
- 21 **For those reasons, whilst the Tribunal is not satisfied that the covenant in clause 3.3 is relevant or engaged, the Tribunal finds that breaches have been committed in relation to paragraph 8 of the First Schedule and makes a determination accordingly.**

### **Rights of APPEAL**

- 1 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.**
- 2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.**
- 3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.**
- 4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.**